

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 09-20225

SCOTT SAMONEK,

Defendant.

**ORDER DENYING WITHOUT PREJUDICE
MOTION FOR NOTICE OF 404(B) EVIDENCE AND BRADY MATERIALS**

Defendant Scott Samonek has filed the above-captioned motion but has failed to indicate whether or not the contemplated relief would be agreed to by the Government.

Eastern District of Michigan Local Rule 7.1(a) states as follows:

(1) The movant must ascertain whether the contemplated motion . . . will be opposed. If the movant obtains concurrence, the parties may make the subject matter of the contemplated motion or request a matter of record by stipulated order.

(2) If concurrence is not obtained, the motion or request must state:

(A) there was a conference between the attorneys or unrepresented parties in which the movant explained the nature of the motion or request and its legal basis and requested but did not obtain concurrence in the relief sought;
or

(B) despite reasonable efforts specified in the motion or request, the movant was unable to conduct a conference.

(3) The court may tax costs for unreasonable withholding of consent.

Rule 7.1 plainly requires that the movant make clear that it has conducted the required pre-filing conference in which the nature of the contemplated motion was explained or, in the alternative, what unsuccessful efforts were made to engage in such a conference.

No exception is made for criminal cases. See E.D. Mich. LR 12.1(a). If the Government were to agree, the motion would be mooted. The court discourages motion practice that may be unnecessary and wasteful of court and attorney time. In any event, the court does not detect a basis in Rule 404 on which to build a pretrial motion, in that the Rule speaks only of a "request" made by "the accused. Accordingly,

IT IS ORDERED that the Defendant's "Motion for Notice of 404(b) Evidence and Brady Materials" [Dkt. # 23] is DENIED WITHOUT PREJUDICE.

s/Robert H. Cleland
ROBERT H. CLELAND
UNITED STATES DISTRICT JUDGE

Dated: November 18, 2009

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, November 18, 2009, by electronic and/or ordinary mail.

s/Lisa G. Wagner
Case Manager and Deputy Clerk
(313) 234-5522